

Language Access Committee
Matheson Courthouse
Council Room
450 South State St.
Salt Lake City, Utah 84111

March 17, 2017

Members Present

Judge Rick Romney - Chair
Jennifer Andrus
Judge Su Chon (via phone)
Mary Kaye Dixon
Michelle Draper
Amine El Fajri
Gabriela Grostic
Megan Haney
Maureen Magagna
Randall McUne
Miguel Medina
Russ Pearson

Members Excused

Judge Mike Leavitt
Bebe Vanek

Staff

Keisa L. Williams
Jeni Wood - recording secretary

Guests

(1) Welcome.

Keisa Williams noted Judge Romney would be late; therefore, Randall McUne welcomed the committee to the meeting. Mr. McCune then addressed the January 20, 2017 minutes. With no changes, Megan Haney moved to approve the minutes. Mary Kay Dixon seconded the motion. The motioned carried unanimously.

(2)Finalize Employee Stipend Amendments.

Ms. Williams initially discussed her amendments to the definition section of CJA Rule 3-306.01, per the committee's request at the January meeting. Ms. Williams opened the conversation to the floor to discuss the definitions as presented. Judge Su Chon recommended changes to better clarify the "court interpreter" definition. After brief discussion, the committee agreed to the change. The committee next discussed the definition of "staff interpreter." There were no changes to that section. Judge Chon asked about the meaning behind "normal conversation." Maureen Magagna stated that the court staff is already aware they are not allowed to offer legal advice; therefore, they are very clear on what simple, normal language means.

The committee next discussed the amendments to CJA Rule 3-306.04. Mr. McUne asked if this was defined in the Human Resources Manual. Russell Pearson said Brent Johnson discusses these issues in his ethics classes. Judge Chon recommended citing to the Human Resource Policy in the definition. Ms. Williams discussed that court employees are not allowed to interpret during legal proceedings unless they meet certain requirements. Ms. Williams noted that if an employee speaks a very rare language, exceptions can be made. Mr. Pearson reviewed with the committee the Human Resources Code of Personal Conduct 500 regarding legal advice by court employees. The committee continued to discuss the various changes to this rule. Gabriela Grostic asked if court employees with stipends are bound by the same attorney/client privilege as interpreters. Michelle Draper said yes they are all bound the same as our staff interpreters. Mr. McUne suggested speaking with the State Bar about

defining legal advice. Ms. Magagna said she trains her staff that when someone asks questions such as “should I,” it is a red flag that a response might be misunderstood as legal advice. Mr. Medina said the staff interpreters get legal questions on a regular basis. He doesn’t see a conflict of interest in answering basic questions. Jennifer Andrus said there should be exceptions due to the lack of available interpreters. Ms. Draper said if it is a dual-relationship such as a clerk being in court and then interpreting in that same courtroom, there is a conflict of interest. Ms. Williams said in the context of an employee who speaks a rare language and is authorized to interpret during legal proceedings, other than in a dual-relationship status, she doesn’t see a conflict of interest. Judge Chon agreed with Ms. Williams, giving the example of having no interpreters available, then the court using a stipend employee to interpret. Judge Chon said the stipend employees give information all the time on things such as explaining a docket or document but still not giving legal advice and guidance. Ms. Williams said she can bring individual cases to the committee as needed. Ms. Grostic said she was concerned about employees not being certified. Ms. Williams explained certified interpreters are always the first choice. Ms. Williams explained the order in which interpreters are assigned. Ms. Dixon said with these changes she believes judges should be trained as well. Ms. Williams said she is planning on developing training for judges, TCE’s, clerks of court, judicial assistants, and court personnel. Ms. Magagna asked about the availability of stipends. The committee briefly discussed the importance of employees being required to pass the OPI in order to receive a stipend. Ms. Williams said she believes there should be follow-up training for employees who receive the stipend. Mr. Pearson agreed this is an issue.

Ms. Williams next discussed proposed changes to the Human Resources Policy Second Language Stipends 570. Ms. Williams explained the changes and the reasoning behind the changes. The committee discussed how many times an employee can take the stipend test and who pays for it. The committee agreed to change the process to allow employees to take the test once every fiscal year at the court’s expense. If the applicant fails and wants to take any additional tests within that year, the applicant must pay for the testing. The committee made changes to the manual during the discussion. Ms. Williams explained that there are now two options for testing, online for \$70 (for a list of specified languages), or over the phone at \$135 for most languages. Ms. Dixon said once she sets up a live test, she leaves the room. Ms. Williams noted this could be a concern if someone had accessibility to cheat. Ms. Grostic said there is also the concern of someone else taking the test for them.

Mr. Medina moved to approve the changes to CJA Rule 3-306.01, CJA Rule 3-306.04 and the Human Resources Second Language Stipend 570 and recommend their approval by the Policy and Planning Committee. Mr. McUne seconded the motion. The motion carried unanimously.

(3) Interpreter Discipline.

The recording was stopped. Ms. Williams discussed a formal complaint that was filed against an interpreter. Judge Romney asked for volunteers to be on the panel. Ms. Grostic, Ms. Haney and Mr. Medina volunteered. They were excused from the room.

Ms. Williams explained to the remaining members that this discussion was confidential. Ms. Williams discussed the details of the complaint and the case involved.

Ms. Williams said Brent Johnson recommends that the discipline process be amended. Currently any discipline/complaints would go to the Court Interpreter Program Coordinator. That person would then make a decision on the disciplinary action. The interpreter may appeal to a 3-person panel of the committee and then appeal again to the committee as a whole. Mr. Johnson and Ms. Williams recommend that all complaints, especially of this magnitude go to the committee or a panel of the committee. Ms. Williams doesn’t believe one person alone should make the decision without ever discussing it with anyone else. Mr. Pearson agreed that the 3-person panel would be an effective and balanced manner. Ms. Draper said ASL interpreters have a similar process. They have a standing three-person disciplinary subcommittee who hear and decide all matters, with an appeal right to the larger group. Judge Romney said he can see the advantage with having the committee involved. Ms. Williams noted in the past the program coordinator made decisions without discussing it with the

committee, therefore, the committee never knew the complaints existed. Ms. Williams said documentation is also critical. Ms. Williams said many people were simply disciplined without documentation. Unfortunately, we can only go forward from here. Mr. Pearson confirmed this is for interpreters who are not employees. Ms. Williams is proposing amendments to CJA Rule 3-306.05. She wanted to address this with the committee before she makes the proposed changes.

Ms. Williams explained the rule amendment process. Once rules have been approved by this committee, they will go to the Policy and Planning Committee for approval. Once approved by Policy & Planning, they go to the Management Committee and Judicial Council for approval and sent out for a 45-day comment period. After comment, the rule goes back to Policy & Planning for revisions, at which point they may send it back to this committee for amendments. Once approved, the rules go back to the Judicial Council for final approval. Judge Chon wanted to confirm that there should be only one appeal right for the disciplinary process. The committee determined that all formal disciplinary complaints should first go to a 3-person panel and then can be appealed to the committee as a whole – minus the panel members. Mr. McUne recommends that the panel bring any issues to the committee.

Ms. Grostic, Ms. Haney and Mr. Medina returned and the recording began again. Ms. Williams explained to the returning members the proposed changes to the disciplinary process in CJA Rule 3-306.05. Ms. Williams will present the proposed amendments at the next meeting. Ms. Williams explained that for this incident the complaint will be sent directly to the panel. After a decision is made, the interpreter can appeal to the full committee; therefore the committee will not see the complaint unless it has been appealed.

Ms. Williams reviewed section 5 of CJA Rule 3-306.05 with the committee, regarding the program coordinator. Ms. Williams noted the 3-person panel can meet with the interpreter or not. Once a decision has been made, a letter needs to be sent to the interpreter. Ms. Williams explained that the letter she sent the interpreter was a basic letter explaining the 30-day response time and she included a copy of the full complaint. Judge Chon suggested for the hearing panel if they were going to bring in the interpreter and the witnesses, to make sure they sent out separate emails and not include the interpreter on the same email as the witnesses. She said it's important the hearing panel not discuss things with the witnesses. Judge Chon said the committee should always hold themselves to a high standard. Mr. McUne recommended that Ms. Williams' response letter to the interpreter should state her recommendation that the disciplinary action be decided by a 3-person panel. Ms. Williams agreed. Ms. Williams said once she gets back the written response from the interpreter she will distribute the materials to the panel. The committee agreed that the more information provided to the interpreter up front would be better. Ms. Williams said she will send the interpreter the audio recording and a very specific letter referencing CJA Rule 3-306.05. The committee further discussed potential changes to the rule, giving advice to Ms. Williams for her proposal.

Judge Romney said interpreters have the right to appear if they choose. Ms. Grostic said allowing the interpreter to present their case shows professionalism on the court's part. Mr. McUne said if the committee allows an interpreter to speak, then the panel members would be excused.

(4) New Chair Election.

Ms. Williams presented Judge Romney and Maureen Magagna with certificates. They were thanked for their service to the committee. Ms. Williams addressed the 3 open memberships: defense attorney (replacement for Bebe Vanek), justice court judge and clerk of court. Ms. Williams presented Lynn Wiseman as the new clerk of court member and Monica Green as the new defense attorney member. Ms. Williams stated that the Board of Justice Court Judges would be meeting the day before the Management Committee meeting to nominate a replacement justice court judge for this committee. Ms. Williams proposed that the Language Access Committee accept and forward the name of the judge selected by the board.

Ms. Dixon moved to accept Lynn Wiseman and Monica Green as new members and to approve and recommend whichever justice court judge was nominated by the Board of Justice Court Judges on April 10th. Jennifer Andrus seconded the motion. The motion passed unanimously.

Ms. Williams noted that two (2) members had been nominated to sit as the new Chair for this committee - Judge Chon and Michelle Draper. Judge Romney asked Judge Chon and Ms. Draper if they were willing to serve as chairs, if elected. Both agreed and were excused. The committee discussed and voted on the nominations and Michele Draper was selected.

(5) Other Business.

Mr. McUne noted that Ms. Williams had included the wrong committee dates on the agenda. The next meeting is scheduled for May 19, 2017.

There being no further business, the meeting adjourned at 1:45 pm.